

# Agenda

## Item #3



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: October 20, 2008

Re: Proposed Rulemaking regarding Seed Money for Gubernatorial Candidates

---

At the Commission's June 27, 2008 meeting, the Maine Citizens for Clean Elections (MCCE) suggested that the Commission consider a rule change that would allow gubernatorial candidates seeking public funding to raise up to \$100,000 in seed money contributions, rather than the current maximum of \$50,000. At its next meeting (July 28), the Ethics Commission accepted the proposed rule change for purposes of receiving public comment. The rule change would be considered major substantive, which means that it would need to be considered by the Maine Legislature during the 2009 legislative session.

After analyzing the private fundraising conducted by the 2002 and 2006 gubernatorial campaigns of John E. Baldacci and Peter E. Cianchette, the Commission staff recommends increasing the maximum amount of seed money to \$150,000. If you wish to consider this amount, you would need to re-open this matter for further public comment, and delay adopting a rule change until your December 29, 2008 meeting. This would not delay the Legislature's consideration of the rule change in the 2009 session.

*Current \$50,000 Limitation for Gubernatorial Candidates*

In the design of the Maine Clean Election Act, seed money functions as limited private financing which candidates may receive in order to start and run their campaigns until they meet the qualifying requirements to receive public funding. The candidates may collect seed money contributions only from individuals, and each contributor may give up to \$100.

Under the current statute (21-A M.R.S.A. § 1125(2), attached), gubernatorial candidates seeking Clean Election funding may raise up to \$50,000 in seed money prior to turning in their qualifying papers. (Senate candidates may collect up to \$1,500 in seed money, and House candidates may collect up to \$500.) As originally enacted by Maine voters in 1996, the statute provides the Commission with the authority to amend these amounts ("The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.")

Under the current maximum, 2010 gubernatorial candidates who intend to qualify for public financing will be able to raise and spend only \$50,000 during 2008, 2009, and the first few months of 2010. The MCCE proposal is intended to make the public financing program more

attractive to 2010 candidates who may be considering in the coming months whether to qualify for public financing. The MCCE argues that “it is also absolutely critical that the Clean Election option appeal to Maine’s strongest, most viable gubernatorial candidates. Having a system that does not attract leading candidates will not allow us to reach the goal of severing the connection between private money and the state’s highest office.” The MCCE states that it has had conversations with potential 2010 candidates, and that the issue has been raised in those conversations.

#### *Public Comments Received on the \$50,000 Maximum*

On September 29, 2008, the Commission held a public hearing for the purpose of receiving comments on the proposed \$50,000 maximum. The Commission heard oral testimony from MCCE Co-Chairs Ann Luther and Alison Smith, and from Joseph Greenier. The Commission received written comments from Senate President Beth Edmonds, Ann Luther and Alison Smith, and Joseph and Michele Greenier.

#### *Past Experience by MCEA Candidates*

In the 2002 and 2006 elections, a total of six gubernatorial candidates qualified to receive Maine Clean Election Act funding:

2002	Jonathan Carter	\$34,138.69
2002	James Libby	\$22,451.56
2006	Patricia LaMarche	\$13,630.10
2006	Barbara Merrill	\$6,255.00
2006	S. Peter Mills	\$50,000.00
2006	Chandler Woodcock	\$24,325.00

Nevertheless, more gubernatorial candidates with significant campaign fundraising experience may be considering Maine Clean Election Act funding in 2010 than in prior election years, because no incumbent is running for re-election and because the program has proven itself to be a viable funding alternative for major party and other candidates.

#### *Past Fundraising by Traditionally Financed Candidates*

In order for the MCEA to be a viable alternative to private fundraising, it must permit candidates to raise a sufficient amount of private seed money contributions prior to qualifying to receive public funding. Typically, candidates who are in a political party qualify for MCEA funding in April of the election year. The Commission staff ran the attached report from its database showing the total contributions received each month by the campaigns of John E. Baldacci (2002 and 2006) and Peter E. Cianchette (2002). The three campaigns began fundraising in April, May, and August before the 2002 and 2006 election years. All three campaigns had raised well in excess of \$100,000 by April of the election year:

	Total receipts through April of the Election Year
John E. Baldacci (2002)	\$595,498
Peter E. Cianchette (2002)	\$359,270
John E. Baldacci (2006)	\$375,935

*Staff Recommendation*

The Commission staff recommends raising the seed money maximum to \$150,000 for two reasons:

- Permitting \$150,000 in seed money contributions will enhance the MCEA as an attractive alternative to private fundraising for serious gubernatorial candidates.
- There appears to be no obvious downside to raising the maximum seed money from \$50,000 to \$150,000. It would not increase the cost of the program. It does not seem to favor or disfavor any candidate or political party.

*Additional Procedure Necessary for Consideration of \$150,000 Maximum*

If the Commission wishes to consider the \$150,000 maximum, at its October 27 meeting it would need to invite additional written comments on the proposed change from \$100,000 to \$150,000, and adopt the \$150,000 maximum at its December 29 meeting. The additional public comment would be required by 5 M.R.S.A. § 8052(5)(B)(attached), because the \$150,000 is a significant change from the \$50,000 maximum in the originally proposed amendment. This would not delay the Maine Legislature's consideration of the rule change in the 2009 legislative session.

Thank you for your consideration of the proposal.

94-270

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

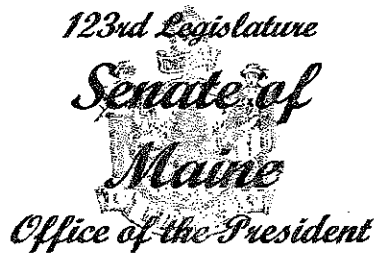
**Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS**

---

**SECTION 2(3) . Seed Money Restrictions**

- A. **General.** After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.
- B. **Total Amount**
- (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
    - (a) One hundred fifty thousand dollars for a gubernatorial candidate;
    - (b) one thousand five hundred dollars for a candidate for the State Senate; or
    - (c) five hundred dollars for a candidate for the State House of Representatives.
  - (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
  - (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.

...



RECEIVED

SEP 26 2008

MAINE ETHICS COMMISSION

**Beth Edmonds**  
**President of the Senate**  
3 State House Station  
Augusta, ME 04333-0003  
(207) 287-1500  
Fax (207) 287-5862

September 24, 2008

Jonathan Wayne  
Executive Director  
Commission on Governmental Ethics and Election Practices  
132 Statehouse Station  
Augusta, ME 04333-0135

Re: Seed Money Contributions for Gubernatorial Candidates

Dear Mr. Wayne:

Thank you for your memo of September 3, 2008 inviting comment on proposed rule amendments regarding seed money contributions for gubernatorial candidates. I appreciate the Commission's interest in this subject and welcome the opportunity to share my thoughts.

#### Maine Clean Elections Act

I was among those who initially supported and fought for adoption of the Maine Clean Elections Act. Our goal was to improve Maine's electoral system by making it possible for candidates to seek public office without having to raise private funds. To date, the Act has been very successful in legislative races, but has a mixed record in gubernatorial races.

Significantly, the incumbent Governor chose not to run under the Act during his bid for re-election in 2006. That is a complex decision and I do not mean to imply any criticism of his choice. I do, however, want to see the Act implemented in such a way that gubernatorial candidates can both participate in the Act and run competitive campaigns. *I strongly believe the proposed rule before you is a positive step in that direction and should be adopted.*

Jonathan Wayne  
September 24, 2008  
Page 2

#### Funding for Gubernatorial Campaigns

Under current rules, Maine Clean Election Act candidates for Governor are entitled to four separate and distinct sources of funding. First, they may raise seed money up to the limit set by the Commission, currently \$50,000. This proposal would raise that figure to \$100,000. Doing so will test a candidate's viability and support and allow him or her to better prepare for the campaign. Also, the additional seed money will assist candidates in gathering the 3,250 qualifying contributions necessary to participate in the Act.

Second, if they are in a competitive primary they will receive \$200,000 in funding for the primary campaign. Third, they will receive \$600,000 for the general election campaign. Clearly, the extra \$50,000 this rule change would make available is not enough to make or break a campaign, but it will provide additional resources at the start of the campaign, when they are most helpful. It would reward the most organized and prepared candidates. That is a good thing, because it is also a measure of their ability to govern if elected.

Finally, candidates are eligible for matching money, up to two times the amount of the initial fund distribution, when third party expenditures are made on behalf of their opponent(s) during the primary or general elections. Again, the larger amount of seed money allowed by this change would allow organized candidates to prepare to make the best use of any matching funds that appear during the campaign.

In sum, allowing this rule change will strengthen the Maine Clean Elections Act by encouraging participation in the Act and by rewarding the most organized and prepared candidates. The result will be an overall reduction in special interest money and the fairest possible elections.

The Maine Clean Elections Act is a national model. This amendment, by strengthening the Act, will assist Maine in remaining a national leader in election form. Please adopt the proposed rule amendment for seed money contributions to gubernatorial candidates.

Sincerely,

A handwritten signature in black ink that reads "Beth Edmonds" followed by a stylized flourish or initials.

Beth Edmonds  
President of the Senate

Cc: Joy J. O'Brien, Secretary of the Senate

# Maine Citizens for Clean Elections

P.O. Box 18187, Portland, ME 04112  
www.mainecelelections.org  
info@mainecelelections.org

(207) 664-0696 Ann Luther, Co-chair  
(207) 879-7440 Allison Smith, Co-chair  
(207) 317-6310 Jill Ward, Program Director

Handwritten  
Item 4  
9/29/0

September 29, 2008

To: Maine Commission on Governmental Ethics and Election Practices

Re: Seed Money Rule Change

**Maine Citizens for Clean Elections (MCCE) supports the proposed increase in the Seed Money cap for gubernatorial candidates.**

In the aftermath of the 2006 gubernatorial election, much effort was put into tightening up the Clean Election system to ensure that so-called "fringe" candidates are not able to access public funds for their campaigns. This was an important effort which was fully supported by MCCE.

Important as that was, it is also absolutely critical that the Clean Election option appeal to Maine's strongest, most viable gubernatorial candidates. Having a system that does not attract leading candidates will not allow us to reach the goal of severing the connection between private money and the state's highest office.

As potential gubernatorial candidates contemplate how to finance their campaigns, it is essential that they see that the Clean Election option provides a realistic opportunity to lay the groundwork for a viable statewide race before public funds are available in the spring of 2010. MCCE believes the cap must be raised in order to meet this test.

Seed money is limited private money that candidates may raise early in their candidacy to get their campaign off the ground and successfully fulfill the requirements of the qualifying process. The contribution limit for seed money is \$100 per donor. Corporations and political action committees are barred from making seed money contributions.

Seed money is the only money available to Clean Election candidates between the time they declare for office and prepare to run a statewide race and the time when public funds are distributed in the spring of 2010. For some candidates, this might be a year-long period.

It is appropriate to revisit the \$50,000 cap which was set more than a decade ago when the Maine Clean Election Act (MCEA) was first drafted. The change is in keeping with the higher costs for everything from gasoline to printing, as well as the significantly higher qualifying threshold that 2010 candidates will be asked to meet. Candidates in 2010 will have to collect a minimum of 3,250 Qualifying Contributions – an increase of 30 percent over 2006.

---

*Maine Citizens for Clean Elections is a coalition of groups and individuals that exists to advocate for, increase public support for, defend and improve the Maine Clean Election Act and related campaign finance law. Members include AARP Maine, Common Cause Maine, the League of Women Voters of Maine, League of Young Voters, Maine AFL-CIO, Maine Council of Churches, Maine People's Alliance/Maine People's Resource Center, Maine Women's Lobby, NAACP-Portland, and Peace Action Maine.*



Doubling the cap to \$100,000 is a big jump, and we don't expect that every candidate will raise the full amount. But we see no harm in raising it that high, and it poses no risk of allowing an influx of big special interest money into Clean Election campaigns.

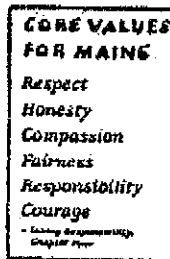
Here is why:

- ✓ The Seed Money contribution limit remains at \$100.
- ✓ At least 1,000 individual supporters would have to donate in order for a candidate to raise the full amount.
- ✓ Only people – not corporations or political action committees (PACs) – may make Seed Money contributions.
- ✓ Raising the cap does not increase the cost of the program, since the money is given voluntarily by individual donors.
- ✓ Candidates will run campaigns on a level playing field, since any unspent Seed Money is deducted from the initial distribution of public funds.

The statute specifically permits the Commission to revise the seed money amounts by rule in order to “ensure the effective implementation of this chapter.” We believe that raising the Seed Money cap will do just that by enhancing the attractiveness of the Clean Election system to the strongest candidates for governor.

We appreciate the Commission undertaking this rule change and fully support its adoption.

104 Muskrat Rd.  
 Stockton Springs ME 04981  
 October 14, 2008.



By fax: 207-287-6775

State of Maine  
 Commission on Governmental Ethics  
 and Election Practices  
 135 State House Station  
 Augusta, ME 04333-0135

RECEIVED

OCT 14 2008

MAINE ETHICS COMMISSION

Subject: Comment on Proposed Rule Amendment

Dear Franklin Jonathan Wayne,

In regards to Proposed Rule Amendment, ch. 3, Section 2(3), we respectfully disagree with raising the total seed money from fifty thousand dollars to one hundred thousand dollars. We believe it goes against the intent of the Maine Clean Elections Act, which is to give money to candidates, so regular people can run for office. By doubling the total seed money, it will have the intent of disadvantaging regular people from running for Governor. We contend that \$50,000 is a lot of money and the lower the amount of seed money, the less chance for undue influence.

We contend that all seed money must come from Maine residents only and within your own district for House and Senate races, and in-state only for Governor's race. If you must get signatures within your own district to get on the ballot, then seed money should be identical.

In order to save taxpayers money, the amount for the House race should be a cap of \$5,000, is sufficient to run for office and maximum of \$15,000 for the Senate race. There also should be identical caps for Publically Funded Candidates. We contend that all Clean Elections money must stay in Maine, because it is taxpayer's money, to help Maine businesses. We are encouraging all previous candidates to reuse signs and campaign materials, to save taxpayers money. All Clean Elections money should be always be spent within the boundaries of Maine and, if possible and within the boundaries of your district, to protect the taxpayer's money. We should be encouraging all political parties to spend money in-state, to support our Maine candidates by using Maine businesses. This will focus on keeping Maine people employed. Please think about it. We need to be frugal with the taxpayer's money.

Thank you.

Concerned Citizens  
 Joe + Michele Greenier  
 and Candidate for Senate District #23  
 Joseph H. Greenier

Month	Receipts Per Month	Cumulative Total Receipts	Receipts Per Month (up to \$100 per contribution*)	Cumulative Total Receipts (up to \$100 per contribution*)
-------	-----------------------	---------------------------------	-------------------------------------------------------------	--------------------------------------------------------------------

### John Baldacci's 2002 Campaign

April 2001	\$11,879	\$11,879	\$1,900	\$1,900
May 2001	\$23,950	\$35,829	\$5,300	\$7,200
June 2001	\$121,500	\$157,329	\$31,700	\$38,900
July 2001	\$8,300	\$165,629	\$24,984	\$63,884
August 2001	\$18,339	\$183,967	\$6,600	\$70,484
September 2001	\$15,485	\$199,452	\$3,420	\$73,904
October 2001	\$90,181	\$289,633	\$25,950	\$99,854
November 2001	\$63,118	\$352,752	\$15,240	\$115,094
December 2001	\$119,748	\$472,500	\$28,285	\$143,379
January 2002	\$7,260	\$479,760	\$17,492	\$160,871
February 2002	\$20,950	\$500,710	\$2,000	\$162,871
March 2002	\$56,510	\$557,220	\$18,360	\$181,231
April 2002	\$38,278	\$595,498	\$7,775	\$189,006
May 2002	\$78,610	\$674,107	\$34,876	\$223,882
June 2002	\$144,649	\$818,756	\$32,818	\$256,700
July 2002	\$63,955	\$882,711	\$23,669	\$280,369
August 2002	\$108,657	\$991,368	\$26,602	\$306,971
September 2002	\$112,295	\$1,103,663	\$29,616	\$336,587
October 2002	\$312,897	\$1,416,560	\$82,078	\$418,665
November 2002	\$90,853	\$1,507,414	\$22,050	\$440,715

### Peter Cianchette's 2002 Campaign

May 2001	\$1,500	\$1,500	\$200	\$200
June 2001	\$50,625	\$52,125	\$7,775	\$7,975
July 2001	\$6,600	\$58,725	\$4,875	\$12,850
August 2001	\$4,250	\$62,975	\$1,500	\$14,350
September 2001	\$19,025	\$82,000	\$7,575	\$21,925
October 2001	\$28,300	\$110,300	\$8,100	\$30,025
November 2001	\$38,980	\$149,280	\$10,000	\$40,025
December 2001	\$89,600	\$238,880	\$16,500	\$56,525
January 2002	\$11,850	\$250,730	\$4,775	\$61,300
February 2002	\$24,245	\$274,975	\$8,020	\$69,320
March 2002	\$33,520	\$308,495	\$10,015	\$79,335
April 2002	\$50,775	\$359,270	\$16,100	\$95,435
May 2002	\$54,985	\$414,255	\$14,285	\$109,720
June 2002	\$62,405	\$476,660	\$15,715	\$125,435
July 2002	\$121,424	\$598,084	\$32,565	\$158,000
August 2002	\$105,299	\$703,383	\$31,805	\$189,805
September 2002	\$124,728	\$828,111	\$34,680	\$224,485
October 2002	\$267,009	\$1,095,121	\$81,268	\$305,753
November 2002	\$26,340	\$1,121,461	\$7,090	\$312,843

\* these columns only count the first \$100 of any contribution

Month	Receipts Per Month	Cumulative Total Receipts	Receipts Per Month (up to \$100 per contribution*)	Cumulative Total Receipts (up to \$100 per contribution*)
-------	-----------------------	---------------------------------	-------------------------------------------------------------	--------------------------------------------------------------------

### John Baldacci's 2006 Campaign

August 2005	\$29,850	\$29,850	\$5,300	\$5,300
November 2005	\$60,251	\$90,101	\$12,700	\$18,000
December 2005	\$108,525	\$198,626	\$29,875	\$47,875
January 2006	\$20,935	\$219,561	\$6,051	\$53,926
February 2006	\$1,000	\$220,561	\$500	\$54,426
March 2006	\$24,400	\$244,961	\$9,150	\$63,576
April 2006	\$130,974	\$375,935	\$26,500	\$90,076
May 2006	\$168,485	\$544,420	\$51,066	\$141,142
June 2006	\$113,325	\$657,745	\$33,195	\$174,337
July 2006	\$97,670	\$755,415	\$30,066	\$204,403
August 2006	\$146,515	\$901,930	\$45,467	\$249,870
September 2006	\$129,202	\$1,031,132	\$33,295	\$283,165
October 2006	\$218,377	\$1,249,509	\$68,860	\$352,025
November 2006	\$26,630	\$1,276,139	\$14,788	\$366,814

\* these columns only count the first \$100 of any contribution

## 21-A §1125. Terms of participation

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular Session of the 123rd Legislature, and is current through December 31, 2007, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State.*

*Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

## 21-A §1125. Terms of participation

**1. Declaration of intent.** A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. A participating candidate must submit a declaration of intent within 5 business days of collecting qualifying contributions under this chapter. Qualifying contributions collected before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

[ 2007, c. 443, Pt. B, §6 (AMD) .]

**2. Contribution limits for participating candidates.** Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's total seed money contributions to the following amounts:

A. Fifty thousand dollars for a gubernatorial candidate; [1995, c. 1, §17 (NEW) .]

B. One thousand five hundred dollars for a candidate for the State Senate; or [1995, c. 1, §17 (NEW) .]

C. Five hundred dollars for a candidate for the State House of Representatives. [1995, c. 1, §17 (NEW) .]

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

[ 2007, c. 443, Pt. B, §6 (AMD) .]

**2-A. Seed money restrictions.** To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification. [2007, c. 443, Pt. B, §6 (NEW) .]

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid



## 5 §8052. Rulemaking

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular Session of the 123rd Legislature, and is current through December 31, 2007, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

## 5 §8052. Rulemaking

**1. Notice; public hearing.** Prior to the adoption of any rule, the agency shall give notice as provided in section 8053 and may hold a public hearing, provided that a public hearing is held if otherwise required by statute or requested by any 5 interested persons.

A public meeting or other public forum held by an agency for any purpose that includes receiving public comments on a proposed agency rule is a public hearing and is subject to all the provisions of this subchapter regarding public hearings.

[ 1997, c. 110, §2 (AMD) .]

**2. Requirements.** Any public hearing shall comply with any requirements imposed by statute, but shall not be subject to subchapter IV. Any public hearing shall be held and conducted as follows.

A. In the case of a rule authorized to be adopted by more than one agency member, at least 1/3 of the agency members shall be present. [1981, c. 524, §2 (NEW) .]

B. In the case of a rule authorized to be adopted by a single agency member, either the agency member, a person in a major policy-influencing position, as listed in chapter 71, or a designee who has responsibility over the subject matter to be discussed at the hearing shall hold and conduct the hearing. [1993, c. 362, §2 (AMD) .]

[ 1993, c. 362, §2 (AMD) .]

**3. Statements and arguments filed.** When a public hearing is held, written statements and arguments concerning the proposed rule may be filed with the agency within 10 days after the close of the public hearing, or within such longer time as the agency may direct.

[ 1977, c. 551, §3 (NEW) .]

**4. Relevant information considered.** The agency shall consider all relevant information available to it, including, but not limited to, economic, environmental, fiscal and social impact analyses and statements and arguments filed, before adopting any rule.

[ 1991, c. 632, §1 (AMD) .]

**5. Written statement adopted.** At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments. The agency shall address the specific comments and concerns

expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

A. If the same or similar comments or concerns about a specific issue were expressed by different persons or organizations, the agency may synthesize these comments and concerns into a single comment that accurately reflects the meaning and intent of these comments and concerns to be addressed by the agency, listing the names of the persons who commented and the organizations they represent. [1993, c. 446, Pt. A, §19 (AMD).]

B. A rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule. The agency shall maintain a file for each rule adopted that must include, in addition to other documents required by this Act, testimony, comments, the names of persons who commented and the organizations they represent and information relevant to the rule and considered by the agency in connection with the formulation, proposal or adoption of a rule. If an agency determines that a rule that the agency intends to adopt is substantially different from the proposed rule, the agency shall request comments from the public concerning the changes from the proposed rule. The agency may not adopt the rule for a period of 30 days from the date comments are requested pursuant to this paragraph. Notice of the request for comments must be published by the Secretary of State in the same manner as notice for proposed or adopted rules. [1993, c. 446, Pt. A, §19 (AMD).]

C. If the adoption under this subsection is final adoption of a major substantive rule under subchapter II-A, the agency must include in its written statement citation of the legislative act authorizing final adoption of that rule; or, if authorization is the result of failure of the Legislature to act under section 8072, subsection 7, the agency must indicate that fact and identify the date the agency filed the rule for review under section 8072. [1997, c. 196, §1 (NEW).]

[ 1997, c. 196, §1 (AMD) .]

**5-A. Impact on small business.** In adopting rules, the agencies shall seek to reduce any economic burdens through flexible or simplified reporting requirements and may seek to reduce burdens through flexible or simplified timetables that take into account the resources available to the affected small businesses. The agency may consider clarification, consolidation or simplification of compliance or reporting requirements. For the purposes of this subsection, "small business" means businesses that have 20 or fewer employees.

Prior to the adoption of any proposed rule that may have an adverse impact on small businesses, the agency shall prepare an economic impact statement that includes the following:

A. An identification of the types and an estimate of the number of the small businesses subject to the proposed rule; [2007, c. 181, §1 (NEW).]

B. The projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; [2007, c. 181, §1 (NEW).]

C. A brief statement of the probable impact on affected small businesses; and [2007, c. 181, §1 (NEW).]

D. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule. [2007, c. 181, §1 (NEW).]

[ 2007, c. 181, §1 (AMD) .]

**6. Effective date.** No rule, except emergency rules adopted under section 8054, becomes effective until at least 5 days after filing with the Secretary of State under section 8056, subsection 1, paragraph B.

When the effective date of a rule is contingent upon the occurrence or nonoccurrence of an event, notification of the occurrence or nonoccurrence must be filed with the Secretary of State when known.

[ 1993, c. 362, §3 (AMD) .]

**7. Adoption of rule.** A rule may not take effect unless:

A. The agency adopts it within 120 days of the final date by which data, views or arguments may be submitted to the agency for consideration in adopting the rule; and [1985, c. 39, §1 (NEW) .]

B. This adopted rule is approved by the Attorney General as to form and legality, as required by section 8056, within 150 days of the final date by which those comments may be submitted. [1985, c. 39, §1 (NEW) .]

The final date for comments may be extended if notice of doing so is published within 14 days after the most recently published comment deadline, in the consolidated notice referred to in section 8053.

[ 1995, c. 373, §3 (AMD) .]

**8. Appropriate reference to underlying federal and state laws and regulations.** At the time of adoption of any rule, the agency shall refer with particularity to any underlying federal or state law or regulation which serves as the basis of the rule.

[ 1985, c. 77, §1 (NEW) .]

**SECTION HISTORY**

1977, c. 551, §3 (NEW). 1977, c. 694, §§34-A (AMD). 1979, c. 425, §4 (AMD). 1981, c. 524, §§1-6 (AMD). 1985, c. 39, §1 (AMD). 1985, c. 77, §1 (AMD). 1985, c. 506, §§A2,3 (AMD). 1985, c. 680, §§1,2 (AMD). 1985, c. 737, §A18 (AMD). 1989, c. 574, §§3,4 (AMD). 1991, c. 632, §1 (AMD). 1993, c. 362, §§2,3 (AMD). 1993, c. 446, §A19 (AMD). 1995, c. 373, §3 (AMD). 1995, c. 463, §1 (AMD). RR 1995, c. 2, §8 (COR). 1997, c. 110, §2 (AMD). 1997, c. 196, §1 (AMD). 2007, c. 181, §1 (AMD).